Post 11/28/68

Judge Labels Vietnam As War in Case of 96

RICHMOND, Nov. 27 (AP) —There is, indeed, a war going on in Vietnam, a Federal judge said here in dismissing the appeal of 96 Army reservists who contended they were illegally recalled to active duty.

U.S. District Court Judge Robert R. Merhige said Tuesday that each reservist signed a contract that stated he would be available for active duty in the event of a mobilization in an emergency and when otherwise provided by law.

He cited the Tonkin Bay Resolution passed by Congress in 1964 which, he said, spelled out the United States' determination to take all necessary steps, "including the use of armed forces," to see that peace and security are maintained in Southeast Asia.

Merhige said that "wars may exist without a formal declaration of same.

"It is a matter of common knowledge that the members of the United States armed forces are now and have for some time past, since 1964, been engaged in a state of war in Southeast Asia," he said.

The reservists involved are members of two units from New York State formerly stationed at Ft. Lee but now on duty in Vietnam.

[Justice Department sources in Washington, informed of Judge Merhige's words, said it seemed that he had based his ruling not on the question of whether a state of war existed but on the terms of the reservists' contracts. Thus, the labeling of the conflict as a "war" was considered incidental in his decision.]